

31 MAR 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Bryan H. Davidson  
NIXON & VANDERHYE  
1100 North Glebe Road, 8th Floor  
Arlington, VA 22201-4714

In re Application of: HARUNA, Tohru, et al.	:	
U.S. Application No.: 10/009,304	:	
PCT No.: PCT/JP00/03912	:	DECISION ON RENEWED
International Filing Date: 15 June 2000	:	PETITION 37 CFR 1.42 AND
Priority Date: 15 June 1999	:	37 CFR 1.47(a)
Attorney's Docket No.: 1858-30	:	
For: NUCLEATING AGENT	:	

This decision is issued in response to applicant's "Response To Decisions On Petitions Dated May 19, 2003, And Renewed Petition Under 37 CFR 1.42" filed 18 November 2003 and the "Response To Communication Dated February 23, 2004 Or Alternatively Petition To Revive Unintentionally Abandoned Application" filed 01 March 2004. No petition fee is required.

**BACKGROUND**

In a decision mailed on 19 May 2003, this Office granted a petition by applicant to withdraw a previous holding of abandonment. However, that decision also dismissed applicants' accompanying petition under 37 CFR 1.42 and 1.47(a). The decision provided a two month extendable response period, and stated that the failure to file a timely response would result in abandonment of the application.

On 23 February 2004, in response to a status request from applicant, this Office issued a Communication informing applicant that no response to the 19 May 2003 submission was present in the application file, and that the application was therefore considered abandoned for failure to respond to the 19 May 2003 decision.

On 01 March 2004, applicants filed the "Response To Communication Dated February 23, 2004 Or Alternatively Petition To Revive Unintentionally Abandoned Application" considered herein. The submission includes a copy of the "Response To Decisions On Petitions Dated May 19, 2003, And Renewed Petition Under 37 CFR 1.42," also considered herein, and evidence that these materials were originally filed on 18 November 2003 (with an extension fee) as a proper and timely response to the 19 May 2003 decision.

**DISCUSSION**

**A. Applicants' 01 March 2004 submission**

The 01 March 2004 submission is treated as a petition under 37 CFR 1.181 to confirm the

18 November 2003 filing of the "Response To Decisions On Petitions Dated May 19, 2003, And Renewed Petition Under 37 CFR 1.42." A review of the application file reveals that the original papers filed on 18 November 2003 have now been matched to the application file, and these materials bear a USPTO receipt stamp dated 18 November 2003, confirming the asserted filing date. The file also reflects payment of the required four month extension fee.

Based on the above, applicants' petition under 37 CFR 1.181 is moot. The "Response To Decisions On Petitions Dated May 19, 2003, And Renewed Petition Under 37 CFR 1.42" filed 18 November 2003, in combination with the extension fee submitted therewith, represents a timely response to the 19 May 2003 decision. Accordingly, the holding of abandonment set forth in the Communication mailed by this Office on 23 February 2004, based as it was on applicants' purported failure to file a timely response to such decision, is appropriately vacated.

**B. Renewed Petition Under 37 CFR 1.42 and 37 CFR 1.47(a)**

The renewed petition filed by applicants on 18 November 2003 states that the wife/heir of the deceased inventor, whose refusal to sign the declaration was the subject of the petition under 37 CFR 1.47(a), is now herself deceased. The petition also states that the children of the deceased inventor and his deceased wife are the sole heirs of the deceased inventor and have cooperated in executing a declaration. Based on these statements, the petition under 37 CFR 1.47(a) is now moot.

The declaration filed with the renewed petition identifies the deceased inventor and states the inventor's country of citizenship and residence, as required for compliance with 37 CFR 1.497(a)(3). The declaration is signed by the "sole heirs in law" of the deceased inventor's estate, states the heirs relationship to the deceased (i.e., heirs), and provides the heirs' country of citizenship and residency. Accordingly, the declaration complies with the requirements of 37 CFR 1.497(b)(2).

The submission of the declaration executed by heirs of the deceased inventor is hereby construed as an indication that no legal representative of the deceased's estate has been appointed and that no legal representative is required by the applicable law to be appointed. If this interpretation is incorrect, applicant is required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

Based on the above, it is appropriate, at this time, to accord the application status under 37 CFR 1.42.

**CONCLUSION**

The holding of abandonment contained in the 23 February 2004 Communication is hereby **WITHDRAWN**.

For the reasons discussed above, the petition under 37 CFR 1.181 filed 01 March 2004 and the petition under 37 CFR 1.47(a) are **MOOT**.

The request for status under 37 CFR 1.42 is **GRANTED**. The declaration filed on 18 November 2003 is accepted as complying with 37 CFR 1.497.

The application will be forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 18 November 2003.



Richard M. Ross  
PCT Petitions Attorney  
PCT Legal Office  
Telephone: (703) 308-6155  
Facsimile: (703) 308-6459